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1986

# c 70 Canadian Insurance Exchange Act, 1986

Ontario

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## CHAPTER 70

### **An Act to continue The Canadian Insurance Exchange**

*Assented to December 18th, 1986*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“board” means the board of directors of the Corporation;

“broker” means a member of the exchange authorized by the board to place insurance on the exchange;

“by-laws” means the by-laws of the Corporation and orders made under section 14 and includes rules and directions made under the by-laws;

“Corporation” means The Canadian Insurance Exchange constituted by letters patent under the *Corporations Act* dated the 12th day of June, 1986 and continued under this Act;

R.S.O. 1980,  
c. 95

“exchange” means a centralized market facility operated by the Corporation for placing of insurance risks, including reinsurance, with syndicates, either alone, with other syndicates or other insurers, to share the risks for a price negotiated within the facility;

“insurance” means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance;

“Minister” means the Minister of Financial Institutions or other such member of the Executive Council to whom the administration of this Act may be assigned;

“Ministry” means Ministry of the Minister;

“person” includes a syndicate;

“prescribed” means prescribed by the regulations;

“regulations” means regulations made under this Act;

R.S.O. 1980,  
c. 218

“Superintendent” means the Superintendent of Insurance appointed under the *Insurance Act*;

“syndicate” means an underwriting member of the exchange.

Corporation  
continued  
R.S.O. 1980,  
c. 95

**2.—**(1) The Canadian Insurance Exchange incorporated by letters patent under the *Corporations Act* dated the 12th day of June, 1986 is continued as a corporation without share capital under the name “The Canadian Insurance Exchange”.

Name in  
other  
language

(2) The Corporation may have in its by-laws a provision setting out its name in any language and the Corporation may be legally designated by that name.

Head office

**3.** The head office of the Corporation and the exchange operated by the Corporation shall be located in The Municipality of Metropolitan Toronto.

Object

**4.—**(1) The object of the Corporation is to operate the exchange for the placing and underwriting of insurance by its members.

Non-profit

(2) The Corporation shall be carried on without the purpose of gain for the benefit of its members and any profits or other accretions to the Corporation shall be used in promoting its object.

Powers

**5.** The Corporation may do all things necessary or incidental to its object and, without limiting the generality of the foregoing, the Corporation may,

(a) borrow money on the credit of the Corporation;

(b) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation; and

(c) acquire by purchase, lease or otherwise, and hold, for any period of time, land or interest therein whether or not the land or interest is necessary for its actual use or occupation or for carrying on its undertaking and may sell, charge, lease or other-

wise deal with or dispose of land or any interest therein.

**6.—**(1) The affairs of the Corporation shall be managed by the board of directors consisting of, Board of directors

- (a) directors elected by the syndicates;
- (b) directors elected by the brokers; and
- (c) public directors appointed by the Lieutenant Governor in Council.

(2) The by-laws shall set out the number of directors to be elected under each of clauses (1) (a) and (b) and to be appointed under clause (1) (c) but the number of public directors shall be not less than 25 per cent of the total number of directors. Idem

(3) It is not necessary that all directors elected hold office for the same term. Term of office

(4) A majority of the members of the board constitutes a quorum. Quorum

(5) Notwithstanding any vacancy in the board, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office. Vacancies

**7.—**(1) The directors, other than the public directors, shall be elected by the members at any general or special meeting of the Corporation in such manner, including by rotation or otherwise, as the by-laws provide. Election of directors

(2) The public directors shall be appointed by the Lieutenant Governor in Council for a period not exceeding three years. Appointment of directors

(3) No person employed or otherwise associated with a member of the Corporation is eligible to be a public director. Eligibility of public directors

(4) The directors of the Corporation in office immediately before this Act comes into force shall be deemed to be the directors elected under subsection (1) and shall remain in office until the members elect the directors in accordance with subsection (5). Continuation of directors

(5) The directors referred to in subsection (4) shall call a meeting of the members within six months after this Act First election

comes into force for the purpose of electing the board in accordance with this Act and the by-laws.

Chairman,  
vice-chairman

**8.** The chairman and every vice-chairman of the board shall be elected by the board from among the directors and either the chairman or one of the vice-chairmen shall be a public director.

President

**9.—(1)** The president of the Corporation shall be appointed by the board and may, but need not, be a director.

Dis-  
qualification

(2) No person employed or otherwise associated with a member of the Corporation is eligible to be president.

Duties of the  
president

(3) The president shall be the chief executive officer of the Corporation.

Removal

(4) The president may be removed from office by the board upon a vote of two-thirds of the directors.

Appointment  
of officers

**10.—(1)** Every officer of the Corporation, except the chairman and any vice-chairman of the board and the president, shall be appointed by the president with the approval of the board.

Officer not  
to  
be director

(2) No officer of the Corporation, except the chairman and any vice-chairman of the board and the president, may be a director of the Corporation.

Indemnity of  
directors  
and officers

(3) Every director and officer of the Corporation and his or her heirs, executors and administrators and estate and effects respectively shall be indemnified and saved harmless by the Corporation from and against,

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, by or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof,

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

(4) The Corporation may purchase and maintain insurance for the benefit of a director or officer except insurance against a liability, cost, charge or expense incurred as a result of his or her failure to act honestly and in good faith with a view to the best interests of the Corporation.

Insurance

**11.—**(1) For the purposes of the object of the Corporation, the board has the power to govern and regulate,

Powers of the board

- (a) the exchange;
- (b) the members and underwriting managers including their internal arrangements;
- (c) the business conduct of members and underwriting managers and their employees and agents and other persons associated with them in the conduct of business;
- (d) the business or kind of business that members may conduct on the exchange and the terms under which any business may be conducted,

and, in the exercise of such powers and in addition to its power to pass by-laws under Part III of the *Corporations Act*, the board may pass such by-laws and make such rules and issue such orders and directions pursuant to the by-laws as it considers necessary, including the imposition of fines and other penalties for the breach of any by-law, rule, direction or order.

R.S.O. 1980,  
c. 95

(2) If the board passes a by-law that provides for the making of an order restricting or suspending the privileges of any member, underwriting manager or employee, agent or other person associated with a member or manager in the conduct of business before a hearing of the matter is held, the by-law shall provide that any restriction or suspension may be imposed only where the board considers it necessary for the protection of the public interest and that the restriction or suspension expires fifteen days after the order was made unless a hearing is held within that time to confirm or set aside the order.

By-law  
restricting  
privileges

(3) The board may pass by-laws delegating to one or more persons or committees the power of the board,

Delegation  
of power

- (a) to consider, hold hearings and make determinations regarding applications for any acceptance, approval, registration or authorization and to impose condi-

tions on any such acceptance, approval, registration or authorization;

- (b) to investigate and examine the business conduct of members and underwriting managers and their employees and agents and other persons associated with them in the conduct of business related to the exchange; and
- (c) to hold hearings, make determinations and impose discipline, including fines and other penalties, on persons referred to in clause (b) in matters related to business conduct,

subject to such restrictions, conditions and requirements as the board may set out in the by-laws.

By-laws come into force

(4) By-laws passed by the board come into force on being approved in writing by the Superintendent.

R.S.O. 1980, c. 446 does not apply

(5) By-laws are not regulations within the meaning of the *Regulations Act*.

Meeting by telephone, etc.

**12.**—(1) A meeting of the board or of any committee established by the board may be held by means of telephone, electronic or other communication facilities if,

- (a) the telephone, electronic or other communication facilities permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously; and
- (b) all of the participants in the meeting consent.

Idem

(2) Every person participating in a meeting described in subsection (1) shall be deemed to be present at the meeting.

Records

(3) The books and records of the Corporation may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device.

Admissibility of records

(4) The bound or looseleaf book or, where the record is not kept in a looseleaf book, the information in the form in which it is available under subsection (3) is admissible as evidence, in the absence of evidence to the contrary, of the facts stated therein.

Application of R.S.O. 1980, c. 95

**13.** The *Corporations Act*, except sections 131, 275, 276, 312 and 313, applies to the Corporation, except,

- (a) to the extent that the provisions thereof are inconsistent with this Act;
- (b) that a public director may not be removed from office under section 67 of that Act; and
- (c) such other provision as may be prescribed.

**14.**—(1) The Lieutenant Governor in Council may by order exercise any power in the public interest that the board may exercise. Orders by  
L.G. in C.

(2) Where there is an inconsistency between any order made under subsection (1) and any by-law passed by the board, the order shall prevail. Order  
prevails

**15.**—(1) The Superintendent may direct to the Corporation, its members and underwriting managers and their employees, agents and other persons associated with them any inquiry respecting the conduct of their business. Inquiries by  
Superin-  
tendent

(2) Every person to whom an inquiry is directed under subsection (1) shall make prompt and explicit answers to the inquiry. Idem

**16.**—(1) The Superintendent and every person authorized in writing for the purpose by the Superintendent shall at all times have access to all the books, records, securities and documents, whether stored electronically or otherwise, of all persons to whom an inquiry may be directed under section 15 that relate directly or indirectly to business involving the exchange. Access to  
documents

(2) Every person in charge, possession, custody or control of books, records, securities or documents to which access is provided under subsection (1) shall ensure that access is provided. Idem

**17.**—(1) Where upon a statement made under oath it appears probable to the Superintendent that any person has contravened any of the provisions of this Act or the regulations, the Superintendent by order may appoint any person to make such investigation as the Superintendent considers expedient for the due administration and enforcement of this Act and, in the order, shall determine the scope of the investigation. Investigation

(2) For the purpose of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine, Scope of  
investigation



- (a) the affairs of the person in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person and any property, assets or things owned, acquired or alienated, in whole or in part, by the person or by any person acting on behalf of or as agent for the person; and
- (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person and the relationship that may at any time exist or have existed between the person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to  
summon  
witnesses  
and require  
production

(3) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court and no provision of the *Evidence Act* exempts any bank or loan or trust corporation or any officer or employee thereof from the operation of this section.

R.S.O. 1980,  
c. 145

Counsel

(4) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of  
property

(5) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

Inspection  
of seized  
documents

(6) Where any documents, records, securities or other property are seized under subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the person from whom seized at a

mutually convenient time and place if a request for an opportunity to inspect or copy is made by that person to the person appointed to make the investigation.

(7) Where an investigation is ordered under this section, the Superintendent may appoint an accountant or other expert to examine documents, records, property and matters of the person whose affairs are being investigated. Accountants and experts

(8) Every person appointed under subsection (1) or (7) shall provide the Superintendent with a full and complete report of the investigation including any transcript of evidence and material in his or her possession relating to the investigation. Reports of investigation

**18.**—(1) The Corporation shall, within two months after each financial year, provide to its members and the Superintendent an annual report relating to its activities in that year, including, Annual report

- (a) financial statements of the Corporation and the auditor's report thereon;
- (b) consolidated financial statements of the business conducted on the exchange in such form as is approved by the Superintendent;
- (c) any other information considered relevant by the Corporation or requested by the Superintendent.

(2) The Superintendent shall report annually to the Minister on the affairs of the Corporation. Report to Minister

**19.**—(1) Subject to section 20, no person who is not a member of the exchange shall directly or indirectly, Members

- (a) carry on business on or through the exchange; or
- (b) hold itself out as being a member of the exchange.

(2) Every person who is a member of the Corporation may carry on business on or through the exchange only in accordance with this Act, the regulations and the by-laws. Idem

**20.**—(1) Every person registered with the Corporation as an underwriting manager may act on behalf of any syndicate in transacting business on or through the exchange in accordance with this Act, the regulations and the by-laws. Managers

- Idem** (2) The Corporation may register underwriting managers to manage and underwrite risks on behalf of one or more syndicates.
- Idem** (3) No person shall directly or indirectly act or purport to act on behalf of any syndicate as an underwriting manager unless the person is registered under this section.
- Syndicates require licences** **21.**—(1) No syndicate shall carry on business on or through the exchange without a licence for the purpose issued by the Superintendent.
- Entitlement to licence** (2) Every syndicate that satisfies the Superintendent that it is approved for membership in the Corporation, has complied with the Act and the regulations, has paid the prescribed fee and has met the prescribed conditions and that provides such additional information as the Superintendent may require is entitled to be issued a licence.
- Conditions** (3) The Superintendent, in issuing a licence, may make the licence subject to such conditions and limitations as the Superintendent considers to be in the public interest.
- Term** (4) The term of every licence shall be one year or such other term as is prescribed.
- Cancellation** (5) Where a syndicate ceases to be a member of the Corporation, the licence of that syndicate is thereupon cancelled.
- Limitation** (6) No syndicate shall carry on business except on or through the exchange.
- Paying cost of examination** (7) When the Superintendent considers it necessary to conduct an examination of the affairs of an applicant for a licence, the applicant shall pay the costs of the examination upon receiving a statement thereof certified by the Superintendent.
- Changes to licences** **22.**—(1) The Superintendent may, at any time, in respect of any licence issued under section 21,
- (a) reduce the term for which the licence was issued;
  - (b) attach any condition or limitation relating to the carrying on of syndicate business that the Superintendent considers appropriate; or
  - (c) amend or revoke any condition or limitation to which the licence is subject.

(2) Before effecting a change to a licence under subsection (1), the Superintendent shall give the licensee notice of an intention to make the change and shall afford the licensee an opportunity to be heard. Idem

(3) Notwithstanding subsection (2), the Superintendent may, without affording the licensee an opportunity to be heard, attach any condition or limitation on a licence that has been imposed on the licensee's membership in the Corporation. Idem

**23.**—(1) Sections 10 and 11 of the *Insurance Act* apply to applications for licences under section 21 of this Act and to changes made to a licence under section 22 of this Act as if the applicant or licensee, as the case may be, were an applicant for a licence under that Act. Application of  
of  
R.S.O. 1980,  
c. 218

(2) Part I of the *Insurance Act*, except sections 14, 16 and 19, applies to syndicates as if they were insurers licensed under that Act and the Superintendent has the same powers and duties with respect to syndicates as are granted to and imposed on the Superintendent under the said Part I. Idem  
R.S.O. 1980,  
c. 218

(3) Except as otherwise prescribed, syndicates shall be deemed to be insurers for the purpose of the *Insurance Act*. Insurers  
R.S.O. 1980,  
c. 218

(4) In performing duties under Part I of the *Insurance Act*, the Superintendent may accept or adopt any inspection, examination, statement or report prepared by the Corporation with respect to the affairs of any syndicate if the Superintendent considers it appropriate to do so. Adoption of  
reports, etc.

(5) Where the Superintendent incurs cost in conducting an inspection or examination of a syndicate under Part I of the *Insurance Act*, the cost may be charged to the Corporation and, where it is so charged, the Corporation is liable for the cost. Cost

**24.**—(1) Every syndicate shall prepare annually and deliver to the Superintendent on or before the last day of February of each year a statement as to the affairs of the syndicate in such form as the Superintendent may require. Annual  
report

(2) For the purposes of subsection (1), the Superintendent may accept a report on the affairs of a syndicate prepared by the Corporation and such report may be in a form set out by by-law. Idem

Change in  
control

(3) Except as prescribed, notice of every change of control of a syndicate shall be given by the syndicate to the Superintendent at least thirty days before the change.

Cease and  
refrain order

**25.—**(1) Where the Superintendent believes, on reasonable grounds, that any person is committing an act or pursuing a course of conduct, or is about to commit an act or pursue a course of conduct in respect of that person's business on or through the exchange that is an unsound business practice, the Superintendent may give notice of an intention to order the person to,

- (a) cease or refrain from doing the act or pursuing the course of conduct;
- (b) perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation; or
- (c) cease or refrain from doing the act or pursuing the course of conduct and to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) Any person receiving notice of intention under subsection (1) may require a hearing before the Superintendent by serving the Superintendent, within fifteen days after receiving the notice, with a request for a hearing.

Idem

(3) Where a request for a hearing is served in accordance with subsection (2), the Superintendent shall hold a hearing.

Immediate  
order

(4) Where, in the opinion of the Superintendent, any delay in the issuance of an order proposed under subsection (1) would be prejudicial to the public interest to a significant extent, the Superintendent may make an order proposed to take effect immediately on its making.

Order

(5) Where a hearing is not requested under this section or where a hearing is held and the Superintendent remains of the opinion that the order proposed should be made, the Superintendent may make the order to take effect immediately on its making or at such later date as may be set out in the order.

Idem

(6) Where an immediate order is made under subsection (4) and a hearing is requested, the Superintendent shall hold the hearing as soon as reasonably possible and shall revoke the order after the hearing unless the Superintendent is satisfied that the order should remain.

(7) Subsection 11 (1) of the *Insurance Act* does not apply in respect of an order made under this section if the person to whom the order was directed did not request a hearing.

Non-application of R.S.O. 1980, c. 218

(8) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

Stay

**26.** Where it appears to the Superintendent that any person has failed to comply with or is violating any provision of this Act, the regulations or a by-law or of an order made under this Act, the Superintendent may, notwithstanding the imposition of any penalty in respect of such non-compliance or violation and in addition to any other rights that the Superintendent may have, apply to a judge of the High Court for an order,

Court order

- (a) directing that the person comply with the provision or order or stop violating the provision or order; and
- (b) where the person is not an individual, directing the directors and officers of the person to comply with the provision or order or stop violating the provision or order.

and, upon the application, the judge may make the order requested or such other order as the judge thinks appropriate.

**27.—(1)** If the Superintendent is of the opinion that the assets of a syndicate are insufficient to justify its continuance in business or to provide proper security to persons effecting insurance with it in Ontario or that it has failed to comply with any law to the detriment or potential detriment of the public interest, the Superintendent may cancel the licence of the syndicate.

Cancellation of licence

(2) Before a licence is cancelled under subsection (1), the Superintendent shall give the syndicate notice of the intention and an opportunity to be heard.

Hearing

(3) Any decision to cancel a licence under this section may be appealed to the Divisional Court.

Appeal

(4) Notwithstanding that an appeal is taken under this section, the decision appealed from takes effect immediately, but the Divisional Court may grant a stay until disposition of the appeal.

Stay

Security  
fund:  
Corporation

**28.**—(1) The Corporation shall establish and maintain security funds to be held in trust for the benefit of policyholders and insureds of syndicates to protect the policyholders and insureds from default by any syndicate.

syndicate

(2) Every syndicate, as a condition of maintaining membership in the Corporation, shall deposit assets in an amount determined by the board by by-law to be held in trust for the purposes of the security fund.

board of  
trustees

(3) A board of trustees shall be established as prescribed to oversee the administration of the security funds.

rules

(4) The Corporation shall make rules pertaining to assessments, the methods of funding the security funds, including surcharges on premiums, the investment of the trust funds, the rights of syndicates with respect to their deposits under subsection (2) and the payment of claims of policyholders and insureds out of the security fund.

Investing  
money

**29.**—(1) Subject to subsection (2), syndicates may invest money in the same manner and subject to the same limitations as an Ontario incorporated joint-stock insurance company.

Idem

(2) No syndicate may invest in another syndicate.

Offence

**30.**—(1) Every person who,

- (a) provides false information in any application under this Act or in any statement, return or answer required to be furnished under this Act or the regulations;
- (b) fails to comply with any order or direction made under or other requirement of this Act or the regulations; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year or to both.

Idem

(2) Where a body corporate is guilty of an offence under subsection (1), every director or officer of the body corporate who, without reasonable cause, authorized, permitted or acquiesced in the offence is also guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to

imprisonment for a term of not more than one year or to both.

(3) No proceeding under this Act shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent as certified by the Superintendent. Limitation

**31.—**(1) The Lieutenant Governor in Council may make regulations. Regulations

- (a) requiring the payment of fees by the Corporation and members in respect of any function performed by the Superintendent under this Act and prescribing the amounts thereof;
- (b) requiring reports to be filed with the Superintendent by any person or class of persons, prescribing when reports shall be filed and the information to be included in the reports;
- (c) governing the board of trustees including the constitution of the board of trustees and qualification for membership;
- (d) exempting the Corporation, any member or class of member from any provision of this Act or the regulations or of any other Act or regulations under any other Act;
- (e) making the Corporation, any member or any class of member subject to any Act or the regulations thereunder or any provision thereof;
- (f) respecting any matter referred to as prescribed by the regulations.

(2) Any regulation may be general or particular in its application. Scope of regulations

**32.—**(1) Clause 390 (a) of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, is amended by adding at the end thereof "except for investments in the shares of a syndicate that is a member of The Canadian Insurance Exchange".

(2) Clause 393 (a) of the said Act is amended by inserting after "Lloyds" in the fourth line "The Canadian Insurance Exchange and its members".



**33.** Section 141 of the *Corporations Act*, being chapter 95 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Syndicates  
excluded

(4) Corporations incorporated for the sole purpose of participating in or constituting a syndicate operating on The Canadian Insurance Exchange are not insurers within the meaning of subsection (1).

Commence-  
ment

**34.** This Act comes into force on the day it receives Royal Assent.

Short title

**35.** The short title of this Act is the *Canadian Insurance Exchange Act, 1986*.